

RESOLUTION 19-011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, TO EXTEND THE DEADLINE BY WHICH SHIPPERS TRANSPORT EXPRESS, MUST TERMINATE OPERATIONS AND VACATE THE SITE LOCATED AT 1150 EAST SEPULVEDA BOULEVARD, CITY OF CARSON

WHEREAS, pursuant to Resolution No. 17-088, adopted on July 5, 2017, the City Council of the City of Carson ordered Shippers Transport Express, Inc. (“Shippers”) to terminate, and cease and desist in, the operation of any cargo container storage and/or any truck parking and/or any truck terminal facilities on or at the property located at 1150 East Sepulveda Boulevard, City of Carson (the “Property”) on or before December 31, 2018 (the “Compliance Deadline”).

WHEREAS, as set forth in the Compliance Resolution, Shippers use and operations on portions of the Property were found to be in violation of various provisions of the City’s zoning regulations, due to the fact that, among other things, Shippers was using the Property for cargo container storage, truck parking and truck terminal facilities without obtaining the required Conditional Use Permit for such operations. In addition, as set forth in the Compliance Resolution, the City determined that the Ground Lease, dated January 1, 2005 between Shippers and BP West Coast Products LLC (“BP”) (the predecessor-in-interest to Tesoro Refining & Marketing Company LLC’s (“Tesoro”) interest in the Property) was entered into without the required City approvals.

WHEREAS, as a result of such violations, pursuant to the Compliance Resolution, Shippers and/or Tesoro (as the landowner of the Property) was required to pay the City the following Development Impact Fees, reflecting compensation for operations by Shippers on the Property: (i) a one-time “Retroactive Development Impact Fee” of Nine Hundred Thousand Dollars (\$900,000.00), which was due by July 25, 2017, (ii) a one-time “2017 Development Impact Fee” of Two Hundred Fifty Thousand Dollars (\$250,000.00) on or before December 31, 2017, and (iii) a one-time “2018 Development Impact Fee” of Two Hundred Fifty Thousand Dollars (\$250,000.00) on or before December 31, 2018. All such fees have been paid by Tesoro and or/Shippers as and when required under the Compliance Resolution.

WHEREAS, as set forth in the Compliance Resolution, in the event Shippers and/or Tesoro submits a written request for an extension to the Compliance Deadline prior to October 1, 2018, the City may consider such proposal and is entitled to extend the Compliance Deadline for a period of up to two (2) calendar years, in its sole and unfettered discretion.

WHEREAS, Tesoro submitted a written request for an extension to the Compliance Deadline on October 1, 2018 and the City Council considered such extension during a closed session meeting held on December 4, 2018, and agreed to grant an extension of up to twelve (12) months (i.e., December 31, 2019), subject to payment of required Extended Compliance Impact Fees (as described below) (the “Extended Compliance Deadline”), which action was reported by the City Attorney during the City Council’s public meeting held on December 4, 2018.

WHEREAS, as set forth in the Compliance Resolution, in the event the City grants an extension to the Compliance Deadline, then (i) Shippers and/or Tesoro must pay an “Extended Compliance Impact Fee” of Two Hundred Fifty Thousand Dollars (\$250,000.00) for each three (3) months extension beyond the Compliance Deadline for on-going operations by Shippers at the Property, and (ii) Shippers and/or Tesoro must deposit with the City the sum of Five Hundred Thousand Dollars (\$500,000.00) (the “Reimbursement Fund”) which the City may draw upon to reimburse the City for any delinquencies by Shippers or Tesoro in complying with this Resolution, for the “Extended Compliance Impact Fee” required to be paid to the City, for any litigation costs and attorneys’ fees incurred by the City arising out of or related to this Resolution, or for any litigation costs and attorneys’ fees incurred by the City in any enforcement proceeding(s) the City may be required to undertake against Shippers and/or Tesoro to compel the cessation of the operation of any cargo container storage and/or any truck parking and/or any truck terminal facilities on or at the Property by Shippers and/or Tesoro.

WHEREAS, Shippers and/or Tesoro submitted a payment in the amount of \$250,000 to the City to cover the first three (3) month period of the Extended Compliance Deadline as required by the Compliance Resolution. In addition, Shippers and/or Tesoro submitted a deposit to the City in the amount of \$500,000 to pay for the Reimbursement Fund as required by the Compliance Resolution.

WHEREAS, as set forth in the Compliance Resolution, in order to be entitled to the extension of the Compliance Deadline, Shippers and/or Tesoro shall be required to pay the City quarterly payments in the amount of \$250,000 for each three (3) month period during the Extended Compliance Deadline.

WHEREAS, this Resolution is being adopted by the City Council in order to memorialize the City Council’s approval of the extension of the Compliance Deadline under the Compliance Resolution and the payments required by, and those previously made by, Tesoro and/or Shippers to the City.

NOW THEREFORE, the CITY COUNCIL of the CITY OF CARSON, CALIFORNIA, does hereby FIND, DETERMINE and ORDER AS FOLLOWS:

Section 1. The foregoing recitals are true and correct and incorporated herein by this reference.

Section 2. Grant of Extension to Compliance Deadline.

A. The City Council hereby acknowledges and agrees that it has approved of the initial extension to the Compliance Deadline for a period of three (3) months, and, subject to payment of all required Extended Compliance Impact Fees as and when due from Shippers and/or Tesoro (as set forth in Section 2.B below), the Compliance Deadline shall be extended for up to twelve (12) months, terminating on December 31, 2019 (the “Extended Compliance Deadline”). Upon such date (or such earlier date in the event of a nonpayment of any required Extended Compliance Impact Fee) Shippers and Tesoro must terminate, and cease and desist in,

the operation of any cargo container storage and/or any truck parking and/or any truck terminal facilities on or at the Property. Failure to meet the Extended Compliance Deadline and/or pay any required Extended Compliance Impact Fee as and when due shall subject Shippers and/or Tesoro to enforcement actions as well as such other legal remedies as may be afforded the City by law, as well as under the Compliance Resolution, including, without limitation, delinquent departure penalty payments in the amount of Five Thousand Dollars (\$5,000) for each day of delayed departure beyond the Compliance Deadline.

B. In consideration of City's agreement to such extension, Shippers and/or Tesoro has paid to the City (1) an "Extended Compliance Impact Fee" of Two Hundred Fifty Thousand Dollars (\$250,000.00) for the first three (3) months of extension beyond the initial Compliance Deadline, and (2) a deposit in the amount of Five Hundred Thousand Dollars (\$500,000.00) (the "Reimbursement Fund"), to be held in a separate City interest bearing account, which the City may draw upon to reimburse the City for any delinquencies by Shippers or Tesoro in complying with this Resolution or the Compliance Resolution, for required payments of the "Extended Compliance Impact Fee", for any litigation costs and attorneys' fees incurred by the City arising out of or related to this Resolution or the Compliance Resolution, or for any litigation costs and attorneys' fees incurred by the City in any enforcement proceeding(s) the City may be required to undertake against Shippers and/or Tesoro to compel the cessation of the operation of any cargo container storage and/or any truck parking and/or any truck terminal facilities on or at the Property by Shippers and/or Tesoro. In addition, Shippers and/or Tesoro shall pay to the City a minimum "Extended Compliance Impact Fee" of Two Hundred Fifty Thousand Dollars (\$250,000.00) for each three (3) months of extension beyond the initial Compliance Deadline for on-going operations by Shippers at the Property, which must be paid to the City on or before the following dates: March 31, 2019, June 30, 2019, and September 30, 2019. In the event of any nonpayment of such Extended Compliance Impact Fee on the date then due, Shippers and Tesoro must terminate, and cease and desist in, the operation of any cargo container storage and/or any truck parking and/or any truck terminal facilities on or at the Property

C. During the term of the Extended Compliance Deadline, Shippers and/or Tesoro shall pay to the City all normal and customary fees and charges applicable to all permits necessary for the use, and any taxes, fees, and charges hereafter imposed by City in connection with the use which are standard and uniformly-applied to similar entities in the City.

D. In the event that any provision of this Resolution is rescinded or revoked by the City, or declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the entire Resolution shall be null and void and shall subject Shippers and/or Tesoro to such enforcement action(s) as well as such other legal remedies as may be afforded the City by law.

E. In the event the City is required to take action to enforce this Resolution, or in the event this Resolution is declared invalid, illegal or otherwise unenforceable by the court of competent jurisdiction and the City is required to commence an enforcement proceeding(s) against Shippers and/or Tesoro, the City shall be reimbursed by Shippers and/or Tesoro for all costs and reasonable attorneys' fees incurred in such action or enforcement proceeding(s).

Section 3. Finding of Compliance With Interim Urgency Ordinance.

A. Interim Urgency Ordinance Nos. 17-1615U and 17-1618U (collectively, the “Logistics Moratorium”) enacted a moratorium on the establishment, expansion or modification of truck yards, logistics facilities, hazardous materials or waste facilities, container storage, and container parking.

B. The City Council finds and determines that this Resolution is consistent with the Logistics Moratorium because it does not allow for establishment, expansion or modification of any facilities subject thereto.

C. The City further finds and determines that this Resolution furthers the purpose of the Logistics Moratorium by providing for termination of existing facilities otherwise subject to the moratorium.

Section 4. Resolution Exempt From CEQA.

A. The City Council finds and determines that this Resolution is exempt from the requirements of the California Environmental Quality Act as a Class 1 Categorical Exemption, Existing Facilities, pursuant to Section 15301 of the CEQA Guidelines.

B. The City Council further finds and determines that this Resolution is exempt from the requirements of the California Environmental Quality Act (“CEQA” as a Class 21 Categorical Exemption, Enforcement Actions by Regulatory Agencies, pursuant to Section 15321 of the CEQA Guidelines.

Section 5. Tesoro Indemnification.

Tesoro shall indemnify, protect, defend, and hold harmless City, and its respective officials, officers, employees, agents, elected boards, commissions, departments, agencies, and instrumentalities thereof, from any and all actions, suits, claims, demands, writs of mandamus, liabilities, losses, damages, penalties, obligations, expenses, and any other actions or proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures) asserted by third parties against City that may arise from or relate to adoption of this Resolution (herein the “**Claims and Liabilities**”), whether such Claims and Liabilities arise out of or under planning and zoning laws, the Subdivision Map Act, Code of Civil Procedure section 1085 or 1094.5, or any other federal, state, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction.

PASSED, APPROVED AND ADOPTED this 8th day of January, 2019,

Albert C. Robles, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Sunny Soltani, City Attorney